IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

Crl.MC.No. 184 of 2007()

CC.557/2005 of JUDL.MAGISTRATE OF FIRST CLASS, AMABALAPUZHA

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PETITIONER:

A.M. NIZAR, AGED 61 YEARS,
S/O.LATE ABDUL RAZAK, MUZHANGODIL HOUSE,
PUTHUKKUNDAM MURI, KARTHIKAPPALLY VILLAGE,
KARTHIKAPPALLY TALUK, ALAPPUZHA DISTRICT.

BY ADV. SRI.G.BENO

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED
BY THE DIRECTOR OF PROSECUTIONS
HIGH COURT OF KERALA, ERNAKULAM.

2. P.J. JACOB, AGED 57 YEARS,
S/O.LATE P.G. JOHN, CHIRAYIL PADICKAL,
PULHUKUNDAM MURI, KARITHIKAPPALLY VILLAGE,
KARTHIKAPPALLY TALUK, ALAPPUZHA DISTRICT.

R2 BY ADV. SRI.M.V.MATHEW
R1 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 06/03/2007, ALONG WITH CRMC NO.191 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.Nos. 184 & 191 of 2007

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Dated this the 6th day of March, 2007

O R D E R

In both these petitions the common petitioner faces indictment in two separate prosecutions under Section 138 of the N.I. Act. He has come before this Court armed with the decision in **Ahammedkutty Haji** v. **State of Kerala** (2007 (1) KLT 68). He contends that no part of the cause of action has arisen within the jurisdiction of the learned J.F.C.M. Ambalapuzha, where both cases have been filed and are pending. Only the J.F.C.M., Haripad has territorial jurisdiction to deal with the dispute. In these circumstances the counsel for the petitioner prays that the proceedings may be quashed.

2. The learned counsel for the complainant/respondent was requested to explain how it can be held that the court at Ambalapuzha has territorial jurisdiction to try the offences under Section 138 of the N.I. Act allegedly committed by the petitioner. The learned counsel fairly submits that the Court at Ambalapuzha

must be invested with the jurisdiction for the only reason that the demand under Section 138(b) of the Act has been made by a counsel at Ambalapuzha. In as much as the demand has been made by the counsel at Ambalapuzha for the payment of the amount due under the cheque, it must be held that the court at Ambalapuzha shall have also jurisdiction. The learned counsel for the respondent relies on the decision in **Bhaskaran** v. **Balan** (1999 (3) KLT 440(SC).

3. The same question came up for consideration in **Ahammedkutty Haji** (supra) and after detailed discussion it has been held that the mere fact that the counsel who issued the notice of demand on behalf of the payee has his office or residence at a different place will not clothe the courts at such place with jurisdiction to try the case under Section 138 of the Act. The making of the demand, to which reference has been made in the decision in **Bhaskaran** must certainly refer to the person on whose behalf the demand is made. Merely because the complainant chooses to engage a counsel at some different place the courts within whose jurisdiction such counsel has his office or residence cannot be clothed with jurisdiction.

4. The prayer is to quash the proceedings. I find no reason to quash the proceedings when the challenge is only against the territorial

jurisdiction. I am satisfied that the lesser relief of transfer of the case to the J.F.C.M. -I, Haripad can be directed.

5. These Crl.M.Cs. are in these circumstances allowed. S.T. Nos. 459 and 557 of 2005 are transferred from the court of J.F.C.M. Ambalapuzha to the court of J.F.C.M.-I, Haripad. The learned Magistrate, Ambalapuzha shall forthwith transmit the records to the Court of J.F.C.M., Haripad and the parties shall appear before the learned Magistrate at Haripad on 30.3.2007 without waiting for any further notice. It shall be ensured that the records reached the court at Haripad by that date.

6. It is pointed out that no objection has been raised by any one about the territorial jurisdiction. I am in these circumstances satisfied that the J.F.C.M.-I, Haripad must be directed to dispose of the case as expeditiously as possible, at any rate, within a period of two months from 30.3.2007.

(R. BASANT)
Judge

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R. BASANT, J.

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Crl.M.C.Nos. 184 & 191 of 2007

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Dated this the 23rd day of January, 2007

O R D E R

Heard. Admitted. Issue notice to respondent/complainant by speed post ack. due. Simultaneously give notice personally to the learned counsel for the respondent/complainant, who is appearing in the court below and file a memo to that effect in 10 days. Call on 26.2.2007.

There shall be an interim stay as prayed for till 26.2.2007.

(R. BASANT)
Judge

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